

Singh (Migration) [2019] AATA 2154 (20 March 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Daljit Singh

CASE NUMBER: 1800295

HOME AFFAIRS REFERENCE(S): BCC2015/2674711

MEMBER: Grant Chapman

DATE: 20 March 2019

PLACE OF DECISION: Adelaide

DECISION: The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:

- cl.820.211(2)(a) of Schedule 2 to the Regulations
- cl.820..221 of Schedule 2 to the Regulations]

1. Statement made on 20 March 2019 at
12:15am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine spousal relationship – substantial pooling of financial resources – shared living arrangements – joint social activities – degree of companionship and emotional support – decision under review remitted

2.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

3.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
5. The applicant, Daljit Singh, applied for the visa on 14 September 2015 on the basis of his relationship with his sponsor, Mari Osuna. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
6. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(a) because they did not accept that sufficient evidence and information had been provided to demonstrate that the applicant and sponsor were in a genuine spousal relationship, as defined under section 5 F of the Migration Act..
7. The applicant appeared before the Tribunal on 14 March 2019 to give evidence and present arguments. The Tribunal also received oral evidence from his sponsor.
8. The applicant was represented in relation to the review by his registered migration agent, Mr Pankaj Dumra. The representative attended the Tribunal hearing.
9. Both prior to and after the Tribunal Hearing, the applicant and sponsor provided additional documents, which had not been provided to the Department of Immigration and Border Protection.
10. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

11. The issue in the present case is whether the applicant and his sponsor are in a spousal relationship, as defined by section 5 F of the Migration Act.
12. In determining the applicant's claims, the Tribunal must first make findings of fact on material matters in dispute. This may involve an assessment of credibility and in so doing, the Tribunal is aware of the need and importance of sensitivity to the circumstances and difficulties applicants may face before the Tribunal, related to their particular situation.
13. The applicant relies on written submissions and supporting evidence provided to the Tribunal and previously to the Department, together with oral evidence which the applicant and sponsor gave at the Tribunal Hearing.

Whether the parties are in a spouse or de facto relationship

14. Relevantly to this matter, clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor, who is an Australian permanent resident.

15. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

16. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The applicant and sponsor provided to the Tribunal a copy of a Commonwealth of Australia Certificate of Marriage confirming that their marriage was solemnised, according to Civil Rites, by authorised celebrant, Christopher Merrigan, on 31 August 2015, at the Births, Deaths and Marriages Registration Office, Adelaide, South Australia. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act, as required by s.5F(2)(a).
17. In examining the documentary evidence tendered and the verbal evidence given by the applicant and sponsor at the Tribunal Hearing, the Tribunal has considered all aspects of the relationship as described in paragraph 12 above.
18. The applicant lodged a valid application for a Partner (Temporary) (Class UK) (Subclass 820) visa and Partner (Residence) (Class BS) (Subclass 801) visa on 14 September 2015.
19. As stated in paragraph 6 above, the Tribunal has benefited in reaching its decision from a quantity of additional relevant information provided to it by the applicant and sponsor, which was not available to the Departmental delegate. However, the Tribunal notes that the applicant and sponsor had provided substantial documentation to the Department. This included copies of their Commonwealth Bank Complete Access bank statements from the opening of the account on 21 July 2015 to 31 December 2016 and also from 7 April to 6 July 2017. Although the Tribunal received a full set of these statements, including the balance of 2017 and all of 2018, these additional statements served only to confirm evidence available already from a careful examination of the statements provided to the Department. The Tribunal is therefore somewhat mystified by the statement on page 5 of the delegate's decision: "in considering your response in assessing the transaction pattern associated with each of the bank statements provided, I note any income earned by you or your sponsor is credited to your separate personal CBA Accounts. In observing this pattern, I'm not satisfied that there is any evidence demonstrating that you and your sponsor have jointly pooled your funds into a shared account. I also find that the funds deposited into your joint accounts predominantly consist of cash deposits and electronic fund transfers from largely unidentified sources." The Tribunal's examination of these joint and personal accounts finds that, while there are some cash deposits and unidentified electronic fund transfers, from the opening of the Commonwealth Bank Complete Access joint account until now, consistently there are transfers into that account readily identified as coming from both the applicant and sponsor's personal bank accounts. It appears to the Tribunal that the delegate may have failed to undertake an adequate examination of these bank accounts. The overall combination of documents and verbal evidence provided to the Tribunal leads it to accept the veracity of the evidence presented. The Tribunal found this evidence to be credible and persuasive in its consideration of all aspects of the relationship, with verbal evidence, in response to the Tribunal's questions, given without hesitation or obfuscation.

20. *Financial aspects of the relationship*

21. *Joint ownership of assets:* The applicant and sponsor provided a Commonwealth Bank statement confirming their joint ownership of a Term Deposit of \$5000. They provided also a Certificate of Title in the name of the sponsor for a residential property at Morphett Vale, South Australia, together with a Settlement Statement, dated 18 December 2018, in the name of the sponsor for \$267,792.01, being the purchase price and related expenses for the Morphett Vale property. The Commonwealth Bank NetBank Saver joint account in the name of the applicant and sponsor shows a transfer on 17 December 2018 of a sum in excess of \$27,000 to the Commonwealth Bank Complete Access joint account, in the name of the applicant and sponsor, described on the statement as Home Deposit, with that latter account showing the funds deposited the same day and a sum in excess of \$36,000 transferred out on the above settlement date. The applicant and sponsor provided statements for two Commonwealth Bank Complete Home Loans, drawn down on 18 December 2018, for terms of 29 years and six months, the sum of which, combined with the above transfer equates to the above settlement amount. From this it is clear that the applicant and sponsor jointly have contributed money to the purchase of this significant asset. When asked about the loans and the property title being in the name of the sponsor, during their separate interviews, they both replied that this was necessitated by the visa status of the applicant. They told the Tribunal that if the appeal to the Administrative Appeals Tribunal for the applicant's visa is successful, then the property will be transferred into joint names. The Tribunal accepts the veracity of the statements and finds that there is intent for the applicant and sponsor to have joint ownership of a significant asset.
22. *Joint liabilities:* The applicant and sponsor provided copies of a Turner Real Estate Tenant Trust Ledger Report showing that, for a residential property at Glandore, South Australia, jointly they had liability for rent on the property from 3 August 2015 until April 2016, together with a Turner Residential Property Tenancy Agreement in their joint names for the same property for the same period of time. Similarly, they provided copies of a LJ Hooker Brighton Residential Property Tenancy Agreement showing joint rental liability for a residential property at Cumberland Park, South Australia, from 21 March 2016 to 20 March 2017 with a Renewal of Current Lease document to 20 March 2018, together with Tenant Trust Ledger Report for that property, from 23 March 2016 until June 2016. A further Real Estate Institute of South Australia Residential Tenancy Agreement was provided jointly in the names of the applicant and sponsor from 22 March 2018 to 21 March 2019 for a residential property at Daw Park, South Australia. The applicant and sponsor provided also several invoices in joint names for utilities services provided to these properties. The applicant and sponsor told the Tribunal Hearing that, subject to the applicant receiving visa approval, the housing loans to which reference is made in paragraph 17 above will be transferred into joint names. The Tribunal finds that the applicant and sponsor have taken on joint liabilities relating to their previous residential arrangements and subject to a spouse visa being issued to the applicant, will share jointly a substantial liability for up to 29 years into the future.
23. *Extent of pooling of financial resources:* The applicant and sponsor provided to the Tribunal (1) a complete set of bank statements for a Commonwealth Bank Complete Access account in their joint names from Statement 1, commencing 21 July 2015 to Statement 12, concluding 6 January 2019, having provided to the Department previously a substantial number of these Statements. These Statements showed a Glandore, South Australia, address to 31 December 2015, then a Cumberland Park, South Australia, address to 7 April 2018 and a Daw Park, South Australia address to 6 January 2019; (2) a complete set of bank statements for a Commonwealth Bank NetBank Saver account in their joint names from Statement 1, commencing 21 July 2015 to Statement 8 concluding and being closed on 14 January 2019, having provided to the Department previously a substantial number of these Statements. These Statements showed a Glandore, South Australia, address to 21 January 2016, then a Cumberland Park, South Australia, address to 21 January 2018 and a

Daw Park, South Australia address to 14 January 2019; (3) a complete set of bank statements for a Commonwealth Bank Smart Access account in the name of the applicant from Statement 20, commencing 2 July 2013 to Statement 42 concluding and being closed on 20 July 2018, having provided to the Department previously a substantial number of these Statements. These Statements showed a Windsor Gardens, South Australia, address to 1 July 2014, then a Glandore, South Australia, address to 1 April 2016, then a Cumberland Park, South Australia address to 1 April 2018 and a Daw Park, South Australia address to 20 July 2018; (4) a complete set of bank statements for a Commonwealth Bank NetBank Saver account in the name of the applicant from Statement 2, commencing 24 July 2012 to Statement 15 concluding and being closed on 28 September 2018. These Statements had not been provided to the Department. These Statements showed a Torrensville, South Australia address to 23 July 2013, a Windsor Gardens, South Australia, address to 23 July 2014, then a Glandore, South Australia, address to 23 January 2016, then a Cumberland Park, South Australia, address to 23 January 2018 and a Daw Park, South Australia, address to 28 September 2018; (5) a complete set of bank statements for a Commonwealth Bank Smart Access account in the name of the sponsor from Statement 1, commencing 7 July 2016 to Statement 4 concluding and being closed on 10 April 2018. These Statements had not been provided to the Department. These Statements showed a Cumberland Park, South Australia address to 31 December 2017 and a Daw Park, South Australia, address to 10 April 2018; (6) a complete set of bank statements for a Commonwealth Bank NetBank Saver account in the name of the sponsor from Statement 1, commencing 20 September 2016 to Statement 5 concluding and being closed on 10 April 2018. These Statements had not been provided to the Department. These Statements showed a Cumberland Park, South Australia address to 20 March 2018 and a Daw Park, South Australia, address to 10 April 2018; (7) a set of bank statements for a National Australia Bank Classic Banking account in the name of the sponsor from Statement 31, commencing 20 July 2013 to Statement 39 concluding on 19 January 2015 and Statement 60 concluding and account being closed on 15 May 2018. These Statements had not been provided to the Department. These Statements showed a Clapham, South Australia address to 19 January 2015 and a Daw Park, South Australia address on Statement 60; (8) Commonwealth Bank Term Deposit account bank statements in the joint names of the applicant and sponsor of address Daw Park, South Australia, for a term deposit of three months from May to August 2018. This term deposit was lodged subsequent to the delegate's decision on the visa, so had not been provided to the Department; (9) Statements for two Commonwealth Bank Complete Home Loan accounts in the name of the sponsor of address Daw Park, South Australia, each commencing with Statement 1, 12 November 2018, concluding with Statement 3, 23 January 2019 showing substantial outstanding loan balances on each. These home loans were taken out subsequent to the delegate's decision on the visa, so had not been provided to the Department; (10) a complete set of statements for a Commonwealth Bank Low Rate MasterCard credit card account in the name of the applicant, from the statement commencing 5 February 2016 to the statement concluding 5 September 2018. These statements had not been provided to the Department. They show a Glandore, South Australia address to 5 April 2016, a Cumberland Park, South Australia, address to 7 May 2018 and a Daw Park, South Australia address to 5 September 2018; (11) a set of statements for a National Australia Bank Traveller Card account in the name of the sponsor with statements commencing 6 January 2013, concluding 23 October 2015 and commencing 31 March 2017, concluding 23 October 2017. These statements had not been provided to the Department. They show address Clapham, South Australia, to 23 October 2015 and Cumberland Park, South Australia to 23 October 2017; (12) a photocopy of a Commonwealth Bank MasterCard debit card in the name of the applicant, expiring March 2022; (13) a photocopy of a Commonwealth Bank MasterCard debit card in the name of the sponsor expiring September 2019.

24. From a careful and detailed analysis of each of these accounts, the Tribunal notes the following: (1) The joint Complete Access and NetBank Saver accounts were opened in July

2015, less than three months after the applicant proposed marriage to the sponsor in April 2015, which proposal she accepted and which they claim as the date from which they had continuing and genuine commitment to each other and one month before their wedding, in August 2015. (2) From the outset, continuously, the joint Complete Access account shows transfers from applicant's Smart Access and NetBank Saver accounts, apart from the period when he was unemployed and from the sponsor, including her Smart Access and NetBank Saver accounts after she opened them. (3) From the closure of their respective individual accounts, identified in paragraph 19 above, during 2018, their salaries have been directly credited to the joint Complete Access account, rather than the previous arrangement in which their salaries were received in their individual accounts and then a substantial proportion transferred across to the joint Complete Access account. (4) There are regular transfers between the joint Complete Access account and the joint NetBank Saver account. (5) From the outset, continuously, there are regular withdrawals from the joint Complete Access account which are reasonably attributable to day-to-day living expenses including residential rent, supermarket purchases, pharmaceuticals, entertainment, utilities payments, travel expenses and motor vehicle expenses. In contrast, withdrawals from the individual accounts of the applicant and sponsor are relatively minor in amount and significance and generally personal in nature. The Debit Cards of both the applicant and sponsor, identified above, are used regularly for purchases debited against the joint Complete Access account. (6) When the respective individual bank accounts of the applicant and sponsor, identified above, were closed, the credit balances in each were transferred to the joint account.

25. The applicant provided documented evidence of having made a binding nomination in favour of the sponsor for 100 per cent of his ANZ Smart Choice Super superannuation in March 2017, while the sponsor provided documented evidence of having made a non-binding nomination in favour of the applicant for 100 per cent of her HESTA superannuation in April 2017.
26. The Tribunal finds that there is strong evidence of a substantial pooling of financial resources between the applicant and sponsor, with this pooling being applied to their day-to-day living expenses, their saving for a deposit to buy a home and their potential retirement incomes.
27. *Any legal obligations owed to the other party:* The applicant and sponsor did not provide any evidence to the Tribunal of any legal obligations to each other nor would they make any claim regarding such legal obligations.
28. *Any sharing of day-to-day household expenses:* As described in paragraph 20 above, the Tribunal finds that, as a result of the substantial pooling of financial arrangements between the applicant and sponsor, since July 2015 they have been sharing completely day-to-day household and living expenses.
29. *Financial aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the financial aspects of the relationship between the applicant and sponsor as demonstrating that the relationship is a mutual commitment to a shared life together to the exclusion of all others, being a genuine and continuing relationship and that they are living together.
30. *The nature of the household*
31. *Any joint responsibility for the care and support of children:* Neither the applicant or sponsor have any children, jointly or separately. The applicant and sponsor told the Tribunal Hearing that, since getting married, they had been trying for a baby but as yet, had not been successful. Later in the Hearing, when questioned about their future plans, both the applicant and sponsor stated their intention to start a family. Although it was not raised as such by the applicant or sponsor, the Tribunal notes that the age of the sponsor may be a

factor in not yet having a child and accepts that it is the intent of the applicant and sponsor to have children together.

32. *The living arrangements of the applicant/sponsor:* The sponsor reiterated to the Tribunal Hearing the claims in the combined Relationship History Statement signed by her and the applicant on 29 August 2017 that, after their wedding on 31 August 2015, she moved in permanently with the applicant at the Glandore, South Australia, unit in which he was living already. In the DIBP Record of Responses online document lodged on 14 September 2015, the applicant and sponsor had said that, prior to their marriage, although committed to a shared life together to the exclusion of all others, "due to their personal, social, cultural and professional reasons," they had lived separately until married. The sponsor reiterated at the Tribunal Hearing that this was the general situation prior to their marriage but that on occasions, she had spent nights at the applicant's Glandore unit. The applicant and sponsor told the Tribunal Hearing that they moved to a rented unit in Cumberland Park, South Australia, in April 2016 and from there to a rented unit in Daw Park, South Australia, in March 2018, where they were living together as at the date of the Tribunal Hearing. They said that they were moving into the house they had purchased at Morphett Vale on the weekend following the Hearing. The sponsor told the Hearing that, if the Tribunal doubted their shared living arrangements and the genuineness of the relationship, it was very welcome directly to contact any of their neighbours, who would verify their circumstances. The real estate documents referred to in paragraph 18 above give credence to these claimed living arrangements. Furthermore, this documented evidence is reinforced by the addresses showing on all of the bank statements provided to the Tribunal, allowing for some minor lags in the banks recording changes of address. The Tribunal finds that the applicant and sponsor have been living together continuously from the date of their wedding, 31 August, 2015.
33. *Any sharing of responsibility for housework:* The sponsor told the Tribunal Hearing that household duties are shared and vary according to their working hours. She said that the applicant now works mostly in the evenings, as a bus driver, for which documentary evidence from his Southlink employer was provided, while she does shift work as a qualified nurse at the Flinders Medical Centre. She said that usually she does the cleaning, clothing and dishwashing, together with some cooking, while the applicant does the cooking, if she is working a daytime shift. The Tribunal accepts that, in the context of their respective employment arrangements, the way in which they share responsibility for housework is reasonable.
34. *Household aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the household as being one which demonstrates the relationship between the applicant and sponsor as being a mutual commitment to a shared life to the exclusion of all others, being a genuine and continuing relationship and that they are living together.
35. *The social aspects of the relationship*
36. *Whether the persons represent themselves to other people as being married to each other:* The applicant and sponsor provided a number of Form 888 Statutory Declarations, together with several standard Statutory Declarations, to the Tribunal. Although only one of these refers specifically to their wedding, all of them express the view that their relationship is genuine and continuing as a couple. They provided also photographs of their wedding and photographs of several social occasions with friends. The Tribunal accepts the adequacy of the evidence provided as affirmation that they represent themselves to others as being married.
37. *The opinion of friends and acquaintances about the nature of the relationship:* Each of the Form 888 and other Statutory Declarations, to which reference is made in paragraph 30

above, express the view that the relationship between the applicant and sponsor is genuine and continuing. The Tribunal notes that the delegate refers to the statements as hearsay. In fact, they are statements made directly by the declarants and do not refer to statements made by other third parties, which would be the case with hearsay.

38. *Any basis on which the persons plan and undertake joint social activities:* The applicant told the Tribunal Hearing that they catch up with friends at least once a month to eat out, go to the beach or visit nearby areas such as Hahndorf, Stirling and Victor Harbor. They provided airline boarding passes and hotel accommodation vouchers as evidence of having travelled together to Melbourne in April 2015, to Hobart in January 2016, to Kangaroo Island in November 2016 and to the Gold Coast in September 2017. Photographs were provided of them undertaking activities during some of these trips. The Tribunal notes that their respective Movement Records shows them departing Australia on the same Singapore Airlines flight on 8 January 2018 but returning on different dates. At the Hearing, the Tribunal asked the applicant and sponsor whether they had travelled together overseas. They replied that they had intended to travel to India in January 2018 together to holiday and a visit the applicant's parents but in the event, the sponsor's mother in Japan contracted serious cancer, from which she later died. Hence, they travelled as far as Singapore together and stayed there two nights, after which the applicant continued on to India and the sponsor travelled to Japan. The Tribunal finds adequate evidence that the applicant and sponsor plan and undertake joint social activities.
39. *Social aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the social aspects of the relationship between the applicant and sponsor as being one which exhibits a mutual commitment to a shared life to the exclusion of all others, being a genuine and continuing relationship and that they are living together.
40. *The nature of the persons' commitment to each other*
41. *The duration of the relationship:* The applicant and sponsor told the Tribunal Hearing that they first met in 2010 when working at Regis Aged Care facility. Documented evidence was provided of this employment. They said that at that time they were merely work colleagues but over the next two years became friends while going out socially, periodically, as a group with other work colleagues from Regis. In December 2012. The sponsor said that she had refused an invitation from the applicant to go on an individual date with him but over the ensuing months they became closer and she accepted an invitation to go on a date in September 2013. After that they continued to date regularly and in April 2015, when the sponsor had to go to Melbourne to renew her Japanese passport, the applicant accompanied her and they spent three nights and four days together in Melbourne, as evidenced by the travel documents two which reference is made in paragraph 32 above. On the last day of that trip, the applicant proposed marriage to the sponsor, which proposal she accepted. They then returned to Adelaide and continued the development of their relationship as they planned for their wedding, which occurred on 31 August 2015 and at which time they started living together on a permanent basis. On the evidence before it, the Tribunal accepts that the relationship between the applicant and sponsor has continued until the present. The Tribunal finds that a genuine and continuing relationship between the applicant and sponsor commenced in April 2015 and continues to the present, which is a period approaching four years.
42. *The length of time during which the persons have lived together:* On the evidence before it, the Tribunal accepts that the applicant and sponsor have lived together continuously since 31 August 2015, a period in excess of three and a half years.

43. *The degree of companionship and emotional support the persons draw from each other:* When asked about this at the Tribunal Hearing, the sponsor said that the companionship and emotional support provided to her by the applicant was extremely important. She said that by nature she was shy and did not relate easily to people, which sometimes made her depressed. She said that the applicant was friendly and encouraged her interaction with others. She said that while she was in Japan caring for her mother with terminal cancer, prior to her mother's death in April 2018, the sponsor spoke to her regularly on the phone giving her support and encouragement. She said that, reciprocally, she had encouraged him regarding his concerns about his mother's health issues. When asked by the Tribunal the sort of things they discuss together, she said their work and events at work, together with family matters and their friends. When the applicant, separately, was questioned on the issues of companionship and emotional support, he referred to the support and encouragement provided by the sponsor regarding his mother's health, as a sufferer from Hepatitis. The sponsor's support is particularly important because, as a nurse, she understands the medical reports which the applicant receives from time to time regarding his mother and is able to discuss them with him. The sponsor said she would be scared if the applicant was taken from her as a result of failing to obtain his visa. The applicant said that he appreciated the maturity of the sponsor and that "she handles me well," he understands her shyness and that she is very nice. The Tribunal accepts the veracity of the evidence of the applicant and sponsor on these matters.
44. *Whether the persons see the relationship as a long-term one:* When questioned on this aspect of the relationship, the applicant and sponsor, separately, claimed that they talk regularly about their future together including alternative job opportunities, wanting to start a family and the potential for their respective families to visit, now that they have bought a three-bedroom home. The Tribunal finds that on the basis of the development of the relationship thus far and their plans for the future, the applicant and sponsor see the relationship as long-term.
45. *Commitment conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the persons' commitment to each other as being one where the relationship between the applicant and sponsor exhibits a mutual commitment to a shared life to the exclusion of all others, being a genuine and continuing relationship and that they are living together with long-term intent.
46. *Any other relevant considerations*
47. The Tribunal has determined that there are no other relevant considerations.
48. *Overall conclusions*
49. For the above reasons, having carefully considered each of the prescribed factors under s.5F (2)(a–d), the Tribunal is satisfied that, at the time of visa application and at the time of this decision, the visa applicant and the sponsor were in a genuine and continuing relationship and had a mutual commitment to a shared life together to the exclusion of all others and live together, or not separately or apart on a permanent basis.
50. Given these findings, the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
51. Furthermore, the Tribunal is satisfied that the applicant's spouse has turned 18 and that the applicant is the holder of a substantive visa and therefore, requirements of cl.820.211(2)(c) and (d) are met.
52. Therefore the applicant meets cl.820.211(2)(a) and cl.820.221.

53. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

54. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl.820.211(2)(a) of Schedule 2 to the Regulations
 - cl.820.221 of Schedule 2 to the Regulations

Grant Chapman
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).